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ABSTRACT

These materials are part of the Project Benchmark series designed to teach secondary students about our legal concepts and systems. This unit focuses on the structure and procedures of the civil court systems. The materials outline common law heritage, kinds of cases, jurisdiction, civil pretrial procedure, trial procedure, and a sample automobile accident case. Suggestions for a sample lesson using these materials are also included. This lesson requires students to conduct a mock trial of a civil court case. A case fact sheet, role playing instructions, case procedures sheet, and jury instructions sheet for the mock trial are also included. (DE)

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CIVIL COURTS

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Civil Courts

NO ONE--EXCEPT A SETTLER IN THE WILDERNESS--can get along without law. Give that settler a neighbor, and the two families will start to make rules.

"Those berries your wife picked are ours. They're ours because they're growing on our side of the creek."

Or, "We'll take turns going into town for supplies. One trip for me, the next one for you."

These rules are simple because the society of two families that made them is simple.

What if one of the neighbors breaks a rule? The other has a choice. He can try to reason with his neighbor. Or he can threaten him with force. Or he can forget the whole thing.

Now a third family comes to the wilderness. John, an older man, is well known and respected by the others. Because of this respect, John becomes the leader of the society of three families--by common agreement. As leader, he has responsibility to settle quarrels.

"John, Martin and Ann say that the boundary of their land is that big spruce tree. But that's not right. Their land just goes to the edge of the creek; the rest is ours."

John wants to hear both sides. "Now hold on a minute. Are you sure your land runs all the way to the spruce, Martin?"

"Well, according to my map here it sure does."

John looks closely at Martin's map. "Well, it seems to me that you're both a bit right. It looks like the boundary should be about half way between the creek's edge and the tree."

The "judge" has ruled. And the "litigants" have their problem solved for them. Here we have seen a law, people who have a dispute over the law, and an authority who decides the dispute.

Common Law Heritage

OF COURSE, THE LAWS THAT GOVERN THE LIVES of 211 million Americans are much more complicated than the laws needed by three families in the wilderness. But our laws, like theirs, grew from the needs of our society.

In fact, people have made laws in response to the needs of daily life for hundreds of years. We base much of our law in the United States on what is called the COMMON LAW* of early England. This law, too, grew out of local English customs and rules. For example, if John Farady rented his neighbor a plow, the neighbor was supposed to return it in good condition. The reason, the courts said, was because of the laws common throughout England. Where did these laws come from? They existed first as local customs.

Early English settlers brought their common law principles with them to the American colonies in the 1600's. Later, traders, trappers, farmers and merchants took the common law west to California. The first California Constitution, adopted in 1849, recognized the common law as the basis for the conduct of its citizens' affairs.

In the 1870's California lawmakers began to organize some of the common law principles into books of law called CODES. For example, the Legislature adopted California's first Civil Code and Penal Code in 1872. The lawyers and judges who wrote these codes looked carefully at the common law principles the California courts used to settle disputes. They compared these principles with STATUTES or laws already passed by the state's early legislators. They also compared the common law with what California's citizens expected. For example, the common law said a man who rented a house had to keep it in good repair. However, our early lawmakers discovered that people who rented houses in California expected the landlord to make the repairs. So here the lawmakers abandoned the common law principle. Instead they wrote a law based on what most of the people agreed was fair.

CIVIL AND CRIMINAL

SINCE THE 1870's OUR CODES HAVE BEEN CHANGED MANY TIMES. Lawmakers REPEAL--withdraw--or AMEND--change--old laws. They add new ones. They rewrite some codes and add whole new ones. For example, parts of the original Civil Code are found today in the Probate Code, Insurance Code, Labor Code, Education Code and Corporations Code.

Courts decide disputes between individuals and companies on the basis of all these laws. We usually refer to these disputes as criminal cases or civil cases. CRIMINAL cases involve charges brought against individuals or companies by the People of the State of California acting through the District Attorney. Civil cases, on the other hand, involve charges brought against individuals, companies or government agencies by other individuals, companies or agencies.

In a criminal case, the District Attorney asks for a prison sentence, or a fine, or both, for the accused. In a civil case, the plaintiff usually asks that money damages be paid by the defendant.

*Important words and phrases are capitalized and defined the first time they appear.

KINDS OF CASES

Criminal cases are the ones you read most about in the newspaper, but they make up only part of the cases the courts hear. The other cases are civil.

Civil cases involve everything people and companies ever have disputes about. Here are some of the kinds of civil cases that the courts hear.

PERSONAL INJURY AND PROPERTY DAMAGE --Many personal injury and property damage cases come about because of automobile accidents. In addition, there are airplane crashes, train wrecks, and ship sinkings. In these cases, the victim--or his surviving family--sues and tries to prove two points. First, that the accident happened because someone was at fault. Second, that the victim has injuries that the court can order someone to pay for.

Courts also handle personal injury cases involving PRODUCTS LIABILITY. For example, a customer buys a new electric iron and gets a bad shock. Or a housewife brings home a package of frozen peas that makes her family ill. Or a supposedly flame-proof dress catches fire when a child brushes against a hot stove. Or a contaminated medicine makes a sick patient even sicker. In these cases, the injured person can sue the firm that sold him the product and also the firm that made it.

Are there other kinds of personal injury cases? Yes. For example, there is personal injury when someone damages another's reputation through LIBEL or SLANDER. That is, by writing or saying something deliberately false about the person. There is personal injury when someone wrongfully imprisons another person. Perhaps a store detective thinks he sees a customer take a silver bracelet and

questions him for five hours in a locked room. Personal injury can be caused by invasion of privacy, too. Such as when a company uses your picture to advertise its deodorant without your permission. In all these cases the injured party may ask the court for damages.

In the business world, property damage is frequent. Shipments of grain, automobiles, glassware, machinery, electronics equipment and countless other items are often lost or damaged. The grower or manufacturer wants payment for his loss. Usually his insurance company pays him. Then the insurance company sues the transportation company that lost or damaged the goods.

Sometimes companies are damaged by unfair competition, too. Perhaps another firm fixes prices or steals the company's trade secrets. Then the injured company can sue for damages. It can also ask the court to force the competition to play fair in the future.

CONTRACTS AND AGREEMENTS --Courts often hear civil cases in which people have made agreements and one claims that the other hasn't kept them. For example, a contractor builds an apartment house. The company he built it for says he used a poorer grade of lumber than their contract called for. The contractor claims the better lumber disappeared from the market because of a shortage. The company wants to hold back at least part of the money it had agreed to pay. The contractor wants it all. So the parties take their dispute to court.

Here's another example. A person or company borrows money and doesn't repay it when due. The lender files suit. Sometimes the borrower doesn't even try to contest the suit; instead he lets the court enter a DEFAULT judgment. That is, he doesn't file papers denying that he owes the money within a certain number of days after the suit starts. The court then orders an automatic judgment against him. Often the borrower hasn't paid because he can't afford to pay. The lender wants the default judgment to help force the borrower to pay later if he has the money.

Most contract cases involve money or goods. But sometimes a person may want to make someone do--or not do--something. For example, a recording studio has a famous rock group signed up to make records for five years. Before the time is up, another studio offers the group twice as much money, plus a Rolls Royce for each member. The group quits the first studio and starts to work for the second. The first studio can't get an order forcing the rock group to work for it. But it can get an order requiring the group not to work for anyone else. This means the group can either continue to record for the first studio--as it promised--or not record at all. The rock group has to obey the court's INJUNCTION--a kind of order the court uses to make people do what they are legally required to do, or to prohibit them from doing an unlawful act.

SPECIAL ACTIONS --Civil courts handle many cases that don't involve money. The people whose lawyers file these cases want the court to make an order that certain things have been done or should be done. For example, a person becomes mentally ill and needs care. In such cases the judge will hold a hearing and listen to experts explain the person's problem and his need for treatment. If the person is found to be mentally incompetent, the judge may send him to a hospital for care and treatment.

What other kinds of special actions are there? A court can declare a person legally dead. It can make an order allowing someone to change his name. It can end a marriage. Or decide which parent a child will live with after a dissolution. A court can make an order permitting an adoption. Or it can arrange help for an elderly person no longer able to care for himself. A court can also arrange care for a minor who isn't properly cared for by his family, or who the court finds to be a juvenile delinquent.

The civil court also handles disputes over the ownership of real estate. Someone may ask the court to decide who really owns a certain piece of land or who has what rights to it. Or how much the land is worth.

Large numbers of civil court cases have to do with the property of people who die, with or without wills. It's up to the judge to make sure that the widow or widower, the children, and other close family members are taken care of financially while the estate is being inventoried and the inheritance taxes and creditors paid. The court sees to it that the wishes of the person who made the will are carried out as closely as legally possible. It also keeps an eye on those who handle the money and property of the estate. The court wants to make sure the money goes to the people who are legally supposed to have it.

Writs are still another kind of special proceeding that come before our civil courts. A WRIT is a court order that commands a person to do, or stop doing, something. For example, a writ of prohibition is usually used to prevent, or stop, something. It may be directed against a lower court, corporation, board or person. It forbids the party to keep on doing what it's doing. For example, the writ might be used against a board of supervisors that is making plans to turn a city park into a parking lot without the proper authority. Another writ the courts can issue is a writ of mandamus, or the writ of mandate. This writ orders a lower court, corporation, board or person to do something. It might tell the body to perform an act required by law. Or it might order that someone be given a certain right or a job to which he's entitled. Today, the court may issue a writ that involves both prohibition and mandamus. That is, the court tells a person or company that it must stop doing something and start doing something else.

Civil Jurisdiction

WHICH CALIFORNIA COURTS HEAR CIVIL CASES? All of our state's courts handle both civil and criminal cases. But they do so in different ways. Justice courts, municipal courts, and superior courts hold trials. Courts of Appeal and the Supreme Court review trial court decisions when asked to do so.

Justice Courts and Municipal Courts--Each county in California is divided into judicial districts. Voters in these districts elect judges to municipal and justice courts. If a judge retires or dies before his term is up, the Governor will appoint someone to take his place until the next election. Municipal courts exist in districts where the population is over 40,000. If there aren't that many people, the county may have one or more justice courts.

Justice courts hear civil claims up to $1,000. Municipal courts have JURISDICTION up to $5,000 in civil matters. This means that an $800 dispute over a dented fender may be heard by the local justice court--if there is one. But a contract case asking for $3,500 should be filed in a municipal court.

Both courts can hear small claims matters. The small claims court was set up as a way to settle disputes over small sums of money. At this time it handles suits for money up to $500. You may sue in small claims court for money someone owes you for a personal injury, or for property damage, labor, goods sold, money lent, or a bad check. The hearings in a small claims court are informal, and the parties may not be represented by attorneys.

SUPERIOR COURT --California has 58 superior courts, one for each county. Superior courts vary in size, but each court has at least one judge There are 22 one-judge courts in the state while the Superior Court of Los Angeles County has 171 judges.

Superior courts handle civil cases when the plaintiff sues for more than $5,000. Superior courts are also the *only* courts which can hear certain special civil matters. As we mentioned earlier, these include:

Equity -- cases involving title to real estate, injunction proceedings and the handling of trust funds.

Probate -- the administration of estates of people who die with or without wills.

Domestic Relations -- legal separations, annulment of marriages, dissolution of marriages, division of community property, child support and child visitation agreements.

Juvenile -- correction and protection of minors and delinquent children.

Adoptions -- adoption of minor children.

Psychiatric Commitment -- protection and custody of the mentally ill.

Guardianship and Conservatorship -- care of those unable to care for themselves. For example, minor children or the aged.

Special Writs -- These include habeas corpus, mandamus, prohibition, certiorari, and other orders, to compel parties to do, or not do something.

COURTS OF APPEAL AND SUPREME COURT --California's appellate courts don't hold trials. That is, they don't hear witnesses testify. Instead, they review the record of the trial and the trial court's decisions in both criminal and civil cases. This review is made at the request of one, or both parties who feel the trial court made a mistake in applying the law to the case or did something improper during the trial.

CIVIL PRETRIAL PROCEDURE

COMPLAINT

A CIVIL COMPLAINT ALWAYS NAMES THE PLAINTIFFS--those who bring the suit--and the DEFENDANTS--those of whom something is being asked.

When one party files a suit against another, the action will be titled *Davis v. Hall*, meaning Davis "versus" Hall, or Davis "against" Hall. When one party doesn't sue another but asks the court to do something, the action will be titled *In re Charles Jones*. For example, such titles are used when the court probates an estate, or authorizes a person to change his name.

The COMPLAINT states the facts which, if proved, will entitle the plaintiff to a judgment. It also contains a paragraph telling what the plaintiff wants: "Wherefore, plaintiff Donald Davis demands judgment against Defendant Hall in the sum of $8,000 principal, interest, costs of suit, and such other and further relief as the court may adjudge."

COURSE OF ACTION

PEOPLE AND COMPANIES SUE FOR MANY REASONS. They may have claims for personal injury, money due for goods and services, faulty products, or breach of contract. The procedure in a civil lawsuit usually goes like this:

--Plaintiff files an ACTION*--or complaint--with the proper court.*

--The clerk of the court issues a SUMMONS. *This is a legal notice telling the defendant the suit has been filed. It lets him know what steps to take to defend himself against the suit.*

--The defendant has at least thirty days to file an ANSWER *or* DEMURRER *with the court clerk. On the one hand, the defendant may answer. That is, he may admit or deny some of the plaintiff's claims. He may also say why he believes the plaintiff shouldn't get damages.*

--Or the defendant may demur. That is, he may say that even if everything in the complaint is true, it still doesn't make him liable for damages. So the court must decide if--assuming the facts are true--they make a case against the defendant. A demurrer may also call attention to some defect in the complaint. For example, it wasn't properly signed or perhaps the plaintiff filed after the time limit on the case had run out.

--If the defendant doesn't respond in the time set by law, the plaintiff may request a DEFAULT JUDGMENT. *This means he asks the court to make a decision on his behalf without first hearing the defendant's story.*

--If the defendant decides to file an answer or demurrer, he may also CROSS-COMPLAIN, *making claims of his own against the plaintiff. He says in effect, "I don't owe him; he owes me." The parties then become known as "plaintiff and cross-defendant" and "defendant and cross-complainant."*

--The plaintiff can then file an answer or demurrer to the cross-complaint.

--The plaintiff or defendant may take DISCOVERY *procedures against the other. That is, each one can take* DEPOSITIONS *or sworn statements of witnesses on the other side. Or each can demand sworn answers to certain* INTERROGATORIES *or written questions. The other side must answer the questions, if they're proper.*

--Either side may make additional PRETRIAL MOTIONS, *such as a motion to strike or omit parts of the complaint or cross-complaint.*

--When the case is AT ISSUE, *one side may ask that the trial be scheduled to start. But before it actually gets underway, the judge and the attorneys will hold a pretrial settlement conference. At this time they will discuss the evidence in the case and see if there is any chance for an out-of-court settlement. Many civil cases are settled at this point, saving the time and money of a court trial.*

--The trial may not be the end of the matter either. The losing side may make a MOTION FOR A NEW TRIAL *before a different jury, which the court may grant. This kind of motion is sometimes part of a negotiating process: Smith gets a judgment against Petersen for $500,000. Petersen then moves for a new trial. If his motion is granted, Smith may have to spend a lot more time and money in court. And he may end up with less money or lose out entirely. So he's apt to try to work out a settlement with Petersen for less than the original $500,000 award the jury made.*

CASE IN POINT

NOW LET'S LOOK AT A TYPICAL CASE IN POINT. *Crowley v. Snell* shows how all these pretrial motions and proceedings work in a typical civil case.

Attorney James Green has a client, Miss Maude Crowley, who worked for many years as a housekeeper and practical nurse for Horace Snell, an elderly, partially paralyzed gentleman. Maude received room and board and some spending money, but no salary. Instead of a salary, Mr. Snell promised to leave her half of his considerable estate. Unfortunately, Mr. Snell didn't put his promise into writing. And more unfortunately, he didn't write a will at all. Without a will, Mr. Snell's estate would go to his only living relative, his nephew Dr. William Snell, a dentist.

Eventually Horace Snell died. The only evidence Miss Crowley had to support her claim to his estate was a cancelled check signed by Mr. Snell. The check for $200 was a loan from Maude to her employer. Maude wrote on the back of the check, "To be repaid whenever convenient in view of promise to leave me estate." Mr. Snell endorsed the check below this statement.

DEMURRER

MAUDE CROWLEY MAKES A CLAIM TO PART OF HER LATE EMPLOYER'S estate through her attorney Mr. Green. But Dr. William Snell denies that Maude has any right to his uncle's money or property. His attorney therefore files a demurrer to Mr. Green's complaint. The demurrer says that even assuming Miss Crowley worked for Mr. Snell all those years, and even assuming she has a "writing," she still doesn't have a true legal claim. Therefore, the demurrer says Maude's complaint should be dismissed and her case thrown out.

The court will decide this question at a hearing, probably before a Law and Motion judge who hears the arguments by both sides. Note that this hearing is *not* a trial. There is no jury; there are no witnesses.

It is strictly a technical matter to decide if Miss Crowley has a legally sufficient claim based on the facts set forth in her complaint. If Mr. Green hasn't stated it properly, he may be given a chance to amend or rewrite her complaint so that it meets legal requirements.

We'll assume this happens. The judge first rules that the facts in the complaint--as stated--aren't sufficient to make a case against Mr. Snell's estate. However, the judge gives Miss Crowley's lawyer a chance to redraft the complaint. The judge then finds the complaint sufficient and says the case can go ahead.

ANSWER

NOW FOR THE FIRST TIME ATTORNEY GREEN GETS A FLICKER of interest from Dr. Snell. Snell's attorney tells Mr. Green that without admitting anything, his client will pay Miss Crowley the $200 she claims Mr. Snell borrowed from her. Mr. Green replies, "Your offer is not acceptable. Mr. Snell's estate is worth $347,000. We are willing to accept half this amount." Dr. Snell loses interest.

Dr. Snell's attorney can't delay. He has a limited time to file an answer with the court clerk. The answer must admit or deny each of the charges in Maude Crowley's complaint. It tells why Dr. Snell believes Miss Crowley isn't entitled to part of his uncle's estate. If the facts had warranted it, Dr. Snell's attorney might have filed a cross-complaint, too. This would have included any claims Dr. Snell had against Miss Crowley. But Dr. Snell didn't have any claims.

DISCOVERY

ONCE THE ANSWER IS IN, THE CASE IS AT ISSUE. That is, it can be set for trial. However, there are some steps the attorneys for either side may want to take first. These are called discovery procedures. Either attorney may take the deposition of parties on the other side. This would mean that Dr. Snell's attorney could have required Miss Crowley to appear before a notary public, and with a stenographic reporter present, to answer questions. Her answers would give Dr. Snell's lawyer a good idea of how she would answer his questions at the trial. It would give him a chance to study the evidence before the trial. This would help him figure out how to best present his own case.

Other discovery methods include orders requiring someone to produce books, records or documents for inspection. Or to submit to physical or mental examinations. Or to require the opposing party to admit or deny the genuineness of documents, such as a will or a deed.

In our example, Dr. Snell's attorney would almost certainly demand to see Miss Crowley's check. Mr. Green would, with precautions, let him look at it. Just as certainly, Dr. Snell's attorney would also want to have a questioned-document examiner look at the check and perhaps make tests to see if the signature was really Horace Snell's.

PRETRIAL SETTLEMENT

Miss Crowley probably though that if her attorney filed suit one day, there'd be a trial within a few months, and she'd know whether she'd won or lost. Of course, this isn't true. All of the preliminaries take time--months and sometimes a couple of years, particularly when the stakes are high.

It's likely in Miss Crowley's case that sometime before trial--possibly after the depositions--Dr. Snell's attorney will have to admit at least to himself that Miss Crowley has a strong case. If she wins the trial, she might get a large slice of the estate. Half? A third? The attorney has to make some shrewd guesses. So he may offer her attorney something less than that to settle the case. The closer the case gets to trial, the more bargaining there'll be.

Six to eight weeks before the trial is scheduled to start, there'll be a trial setting conference. At this conference the judge and the attorneys will discuss a number of things. For example, the number of peremptory jury challenges each side gets if a jury trial is held, the names of the attorneys who will actually try the case, the date for the mandatory pretrial settlement conference, and the actual date on which the trial will begin. Before and after the trial setting conference, the bargaining is likely to continue.

About twenty days before the trial begins, the mandatory pretrial settlement conference will be held. At this meeting, the judge and the attorneys for both sides will try to work out an agreement settling the case. The judge may take an active role in the discussion, reviewing the evidence and telling the attorneys how he believes the case would come out if it went to trial. Of course, the attorneys don't have to accept the judge's opinion. However, most attorneys take the judge's opinion into consideration when they decide whether to settle out of court or proceed to trial.

It isn't uncommon for civil cases to be settled even while the jury is being selected. When Miss Crowley agrees to accept a certain amount of money as a settlement, she gets a check and the case is closed. However, if Dr. Snell refuses to settle or if the two parties can't agree on an amount, the case will go to trial.

CIVIL TRIALS

Officers of the Court

THE JUDGE PRESIDES OVER THE TRIAL. IF THERE'S A JURY, he rules on points of law dealing with trial procedure, evidence, and the laws that apply to the case. The jury decides what the facts of the case are and makes a judgment. If the case is tried without a jury, the judge finds the facts and makes the decision, in addition to his other duties.

The BAILIFF keeps order in the courtroom. He calls the court to order when the judge comes to the bench. He takes charge of the jury during recesses and deliberations. It is also his duty to see that no one talks with or attempts to influence the jury in any way.

The COURT CLERK gives the oath to each witness who testifies. He also marks or registers each exhibit that is entered as evidence. His office also keeps the records of all court cases.

The COURT REPORTER takes down on a shorthand machine all of the courtroom proceedings. He records witnesses' testimony, attorneys' objections to the evidence, and the court rulings on any motions made during the trial.

ATTORNEYS are also officers of the court. It is their duty to represent their clients and present evidence so that the judge or jury can reach a fair verdict or judgment. The attorney's role is partisan; he is an advocate.

JUDGE OR JURY

EITHER PARTY IS ENTITLED TO A JURY TRIAL IN LAWSUITS in which money damages are sought. However, a party may WAIVE--voluntarily give up--this right and ask to have his case heard and decided by a judge. There is no right to a jury trial in equity cases, such as an action to dissolve a partnership or a request for an injunction. In such cases the judge may have a jury sit in an advisory capacity to decide some disputed fact in the case.

JURY TRIAL

CRIMINAL AND CIVIL TRIAL JURIES ARE CALLED PETIT JURIES. Criminal cases are heard by twelve jurors. However, attorneys in civil cases may agree in advance to a smaller number of jurors--usually eight.

When the prospective jurors are seated in the jury box, the judge will conduct the initial VOIR DIRE, or questioning, of these people. Then the attorneys may ask specific questions. All of these questions are designed to find out if any of the prospective jurors are biased. That is, whether there is "existence of a state of mind. . .in reference to the case, or to either of the parties, which will prevent him [the juror] from acting with entire impartiality and without prejudice to the substantial rights of either party. . ." *(Penal Code section 1073)*.

Any number of prospective jurors may be challenged and dismissed for CAUSE--for some reason that shows bias or prejudice. In addition, each side has a limited number of PEREMPTORY challenges. This means it can excuse a juror without giving a reason. In civil cases the plaintiff and defendant are each entitled to six peremptory challenges.

TRIAL STARTS

AFTER THE JURY HAS BEEN SELECTED and sworn in, the judge will say. "Are you ready to proceed, counsellors?" Both civil and criminal cases begin with a statement by the attorney for the side bringing the action. In a civil case this will be the plaintiff's attorney. The purpose of the OPENING STATEMENT is to tell the court and jury what the case is all about and what the evidence will show. However, the opening statement is *not* itself evidence.

Sometimes the defense attorney will not make his opening statement directly following the plaintiff's statement, although he is entitled to do so. He may reserve his opening statement until he begins his defense.

Testimony

THE PLAINTIFF'S ATTORNEY CALLS THE FIRST WITNESS. He is sworn by the court clerk and seated. The witness answers the plaintiff's attorney's questions, helping the attorney build his case for the jury. When the attorney finishes his DIRECT EXAMINATION, the defense attorney may CROSS-EXAMINE the witness. Usually he will do this by taking each piece of the direct examination, trying to get the witness to admit that some of the things he testified to were false or misleading. The attorney may try to show the witness' bias or lack of actual knowledge of the facts in the case. For example, that the train was going 25 rather than 45 miles an hour when it hit the bus.

When the witness has been examined and cross-examined, the attorney who originally called him may ask more questions on RE-DIRECT EXAMINATION. This re-direct examination covers new matters brought out during cross-examination.

When the plaintiff's attorney has finished presenting all of his witnesses and evidence, he'll say, "The plaintiff rests."

Then it's up to the defense. The defense attorney will call witnesses and present evidence, and the plaintiff's attorney will cross-examine the defense's witnesses.

Burden of Proof

WHAT DOES AN ATTORNEY IN A CIVIL CASE HAVE TO PROVE in order to win his case? He must prove his case by a PREPONDERANCE OF THE EVIDENCE. That is, his evidence must be just a little stronger than the other side's, enough to outweigh it.

Let's say Arthur Davis loaned Ben Smith $1,000. And Arthur has Ben's note for that amount. Ben has paid him $200 and refuses to pay another cent. Arthur offers the note in evidence. He also offers his records which show the $200 credit. Ben's evidence is pretty skimpy. He says he doesn't know anything about the note. He tells the judge, "It's a forgery; he just wants to make an easy $800." Maybe Ben really didn't sign the note. But Arthur has it. And if his evidence that Ben signed it is a little more convincing than Ben's to the contrary, then Arthur will have proved his case by a preponderance of the evidence.

Verdict

FINALLY THE BAILIFF LEADS THE JURORS TO THE JURY ROOM. The jury members elect a foreperson and start considering the evidence following the judge's instructions. When the jurors come to a decision--this may be a matter of hours or it may take several days--they tell the judge they've reached a VERDICT. The jurors return to the courtroom. The foreperson hands the written judgment to the clerk, who reads it to the court.

In a civil case, the jury's verdict is on the disputed facts in the case. The jury may make a general finding or verdict. This means it will decide in favor of either the plaintiff or the defendant. Or the jury may make a specific verdict. Then it decides only the significant facts of the case. It lets the judge decide who wins. If the plaintiff wants money damages in a civil suit, the jury must determine how much he will receive when it finds for the plaintiff. The decision in a civil case doesn't have to be unanimous. A three-fourths majority is enough for a verdict.

If the jurors can't reach a decision, the jury is HUNG. Then the case must be retried. Because retrials are expensive in time and money, the judge will often ask the hung jurors to go back to the jury room. He will ask them to look at the evidence again and try to reach a verdict if at all possible.

MOTIONS AFTER VERDICT

AFTER THE TRIAL, THE LOSING ATTORNEY MAY MAKE SEVERAL MOTIONS. The most common is a motion for a new trial. A new trial is a rehearing of the same case before a different jury. An attorney will ask for a new trial if he thinks the judge made a mistake in his rulings during the trial. Or if there wasn't enough evidence to uphold the jury's verdict. Or if the damages the jury awarded were too high and not supported by the evidence presented at the trial.

JUDGMENT

THE JUDGMENT IS THE FINAL DETERMINATION--subject to review by an appellate court--of the rights of the parties in a case. In a civil damage suit the judgment might read: "It is, therefore, ordered and adjudged that the plaintiff recover the sum of $5,000 from the defendant."

APPEAL

IN AN APPEAL A HIGHER COURT LOOKS AT WHAT THE TRIAL COURT did to see if any errors were made which were serious enough to affect the outcome of the trial. There may have been an error in the trial procedure or in interpreting and applying laws to the case. In a civil suit, either party may appeal to a higher court.

EXAMPLE CASE

HERE IS AN EXAMPLE CIVIL TRIAL. *Karabee v. Parr* shows how a personal injury case might proceed.

Bill Parr ran into the rear of Walter Karabee's shiny expensive car on May 19. Bill, 21, wasn't injured, although his car was slightly damaged. The rear end of Karabee's auto, however, was badly dented. And Karabee himself was hurt. His

head had snapped back when Bill's car hit his. The sudden impact damaged the soft tissue in his neck. Bill's lawyer told him later that Karabee's injury was a "whiplash."

Bill immediately reported the accident to his insurance agent. "I admit I rear-ended Mr. Karabee's car," Bill said. "But he started up for a green light and then stopped suddenly. I couldn't help running into him."

A few days later Bill's agent called. "Karabee's injury is more serious than anyone thought at first."

Bill replied, "But he seemed perfectly all right at the time of the accident. He's got to be kidding."

Insurance Company Interview

SOON AFTER BILL HAD AN INTERVIEW WITH ONE OF THE INSURANCE company's lawyers, James Waterman. Bill explained the accident. He said he'd been driving along Main Street during the peak traffic hour, two or three car lengths behind a big sedan. His speed was about 20 miles an hour. Half a block from the intersection of Main and Third Streets, he saw the traffic signal change from red to green. The car in front of him slowed down a little, then started through the intersection. Bill followed, now only one car length behind. Suddenly, the sedan slowed or stopped--Bill wasn't sure which. He hit it.

Mr. Waterman nodded. "Karabee is associated with a large brokerage house. He isn't working now, because of his injury. And his medical bills may be quite high. I've talked to his attorney. He says they'll take $25,000 to settle now. If we don't settle and they sue, they'll ask for more."

"But I only have $10,000 coverage!" Bill said.

"That's right. So the insurance company will pay any judgment or settlement up to that amount--but you'll have to pay the rest yourself."

"What if they sue me and win?" Bill asked. "What if they win, like $40,000?"

"Then," said the lawyer, "you'll be making payments for a long time."

Summons and Complaint

A FEW WEEKS LATER, THE DEPUTY SHERIFF HANDED BILL a summons and complaint. The paper was long and complicated. It said Bill had failed to operate his car carefully, had failed to leave enough space between himself and the car ahead, and had failed to keep a proper lookout. It said, too, that Walter Karabee had been injured. His head had been snapped suddenly, pulling and tearing muscles, tissues, nerves, and ligaments. He had also suffered severe bleeding of the damaged soft tissues, causing him much pain.

Bill called Mr. Waterman right away. The lawyer explained he would defend Bill on two grounds. One, that Walter Karabee himself had been negligent--that he had been partly to blame for the accident, too. And two, that Karabee's damages, including pain and suffering, weren't as great as he claimed. Certainly not the $100,000 he was asking. Another thing--today in California, the jury compares the fault if both parties are partly responsible for an accident. That is, it splits the damages according to the amount of negligence or carelessness on each side. If, for example, the jury found that Karabee was 10 percent responsible for the accident, Bill would pay only 90 percent of the total damages awarded by the jury.

"How soon will we have to go to trial?" Bill asked.

"Not for a long time--a year, maybe two. We have a lot to do in the meantime. We have to interview witnesses and take depositions. We have to file motions and an answer and possibly a cross-complaint. We also have to keep an eye on Karabee's medical progress. I'll let you know when you're needed."

Depositions

SIX MONTHS LATER BILL HIMSELF HAD TO GIVE A DEPOSITION and tell what he knew about the accident. He told his attorney he was nervous about answering the questions Karabee's attorney would ask.

Waterman smiled when Bill told him that. "Just answer the questions," he said. "But don't volunteer any information the attorney doesn't ask for. And if you don't know an answer, just say so."

When the day for the deposition came, Bill met Mr. Waterman at Al Perry's office. Perry was Karabee's lawyer. The only people in the conference room besides Bill and his attorney were Perry and a court reporter who took down the answers to the lawyer's questions.

Bill thought a lot of the questions were unimportant--his height and weight, whether he was married, his addresses over the past ten years, his educational record, whether he was a licensed driver, and a complete description of the car he was driving at the time of the accident. But Perry asked other questions, too. Had Bill ever been in an accident before? Did he wear glasses? What was the weather like at the time of the accident? How fast had he been going? Had he been in a hurry? Had his car be damaged? Had he been injured?

Bill wondered what kind of questions Mr. Waterman would ask Mr. Karabee. A few weeks later he found out.

Mr. Waterman handed Bill a blue covered folder with typewritten pages stapled inside. "That's Karabee's testimony, given at our office. Read through it, Bill, and tell me if there's anything about the accident that's not the way you remember it."

Bill read the 18 typed pages and shrugged when he handed the folder back to Waterman. "That's about how it happened," he said.

Negotiations

SEVERAL WEEKS AFTER THAT, MR. WATERMAN CALLED BILL. "I've been having some serious negotiations with Al Perry," Waterman said. "He's pretty sure of himself. Says he and his client will still accept $25,000 plus costs--and not a nickel less. That would leave you with a $15,000 balance to pay. We can't settle without your consent, of course. If we fight the case right down to the wire, we might hold the court's judgment to a few thousand dollars. On the other hand, Karabee's suit asks for $100,000. He won't get that--but he still might get more than the $25,000 he wants now. That's the risk involved."

Bill said, "I'll have to take the risk. If I can't pay $15,000, I can't pay double that."

Trial Begins

IT HARDLY SEEMED POSSIBLE TO BILL THAT TWO YEARS HAD gone by since the accident. But it was just two years later when the trial of *Karabee v. Parr* finally began.

Most of the first day was spent choosing the jury. Some of the jurors were selected and the others dismissed. Bill was surprised at how few people were left in the courtroom. He had expected the room would be full of spectators. Except for the judge, clerk, bailiff, reporter, attorneys, and a few witnesses, the room was almost empty.

Opening Statements

JUDGE HELEN ENRIGHT SAID TO THE ATTORNEYS, "COUNSEL, although it's late in the afternoon, I prefer you both go ahead with your opening statements today."

Al Perry began. "May it please the court, and ladies and gentlemen of the jury--this suit has been brought by Mr. Walter Karabee against Mr. William Parr. On the afternoon of May 19 at 5:20, Mr. Karabee was returning to his home from his office. He was driving along Main Street, in the area of Third Street."

Mr. Perry paused and moved a blackboard with a sketch of the intersection toward the jury so the members could see it. "Here is Main. Here, at right angles, is Third Street. Both are two-way streets, with one lane of traffic in each direction. There are automatic traffic signals both ways, with the usual red, amber, and green lights to control the traffic flow.

"We will show that as my client, Mr. Karabee, was proceeding into this intersection, he was suddenly struck from the rear by the defendant, Mr. Parr.

"I don't know how many of you ladies and gentlemen may have experienced an accident like this. It is both a mental and physical shock. As the force of the collision passes through the car frame, your head jerks back violently. You have no chance to brace yourself. So tissues, muscles, and nerves are all subjected to tremendous stress. The result is usually a painful injury to the neck, which incapacitates the victim for some time.

"We will show that as a result of this injury, Mr. Karabee required extensive medical treatment. He lost time from work and suffered intense pain. For these expenses, costs, and injuries, he asks that you award him adequate damages.

"At the conclusion of all testimony, Judge Enright will instruct you as to the law involved. I won't attempt to go into it at this point, except to mention that the rule in this state is that a driver can't 'tailgate.' He can't follow the car ahead of him too closely. If he does and an accident results, he's at fault. And he has to pay the victim for all legal damages."

Bill's attorney rose and addressed the court briefly. "We don't deny that the defendant, Mr. Parr, collided with Mr. Karabee. We contend, however, that Mr. Karabee was also negligent in the operation of his own vehicle. And we'll present testimony showing that while Mr. Karabee was hurt, his injuries were not as severe as he claims. Therefore, any damages that he might be entitled to must be reduced according to how much of the accident was his own fault."

Judge Enright spoke up. "We will reconvene here tomorrow at 9:30 a.m. Court is adjourned until then."

KARABEE'S STORY

A STORM CAME UP DURING THE NIGHT, AND IT WAS COLD AND GLOOMY as Bill sloshed to court for the beginning of the plaintiff's testimony. He watched closely as Mr. Karabee was sworn in. Al Perry questioned him about the accident.

When he was finished, James Waterman rose to cross-examine. "Mr. Karabee, you said in your testimony that at the time of the accident, you were on your way home. Is that correct?"

"Correct, Mr. Waterman."

"How long did it usually take you to drive from the office to your home?"

"Oh, about half an hour, I'd say."

"And what were your normal office hours?"

Karabee answered, "8:30 to 5 o'clock."

"The accident occurred at 5:20 p.m., according to previous testimony. So we can assume that you must have left your office about 5 o'clock. You went to the garage in the basement of the building and got your car. You then drove out onto the street on your way home. And at 5:20 or thereabouts, you were in the vicinity of Main and Third Streets. Is that a correct assumption?"

Karabee hesitated. "I'm sure it is. But you understand, Mr. Waterman, I have some difficulty remembering everything exactly. It has been two years. And it was such a bad experience."

"Yes, but you would remember if there had been some unusual event on the day of the accident, would you not?"

Again the hesitation. "If it were unusual, yes, I suppose so."

"Very well. Let's go to another matter. Referring to the accident--you started forward as the signal turned green. And then within a few feet, you braked. You either slowed down or stopped--in order to decide whether to turn right or left. Now that puzzles me, Mr. Karabee. If you were going home, as you said, over a route you had travelled many, many times, why didn't you know which way home was?"

Karabee stared at the attorney, then laughed. "Well, of course I know which way home is. But it just flashed in my mind that I had to pick up my laundry, and the cleaner's was to the right on Third Street. Before I had a chance to turn, though--bam! I got hit from behind."

"Thank you, Mr. Karabee. That's all for now."

EXPERT WITNESS

AL PERRY'S NEXT WITNESS WAS DR. MORTON BANNER. He described Walter Karabee's neck injuries. On cross-examination Jim Waterman held up one of the x-rays that had been introduced into evidence.

"Dr. Banner, this is one of several x-rays you took of Mr. Karabee's neck during the course of his treatment. Was this one taken at a time when Mr. Karabee was supposedly in great pain?"

"It was."

"Doctor, you testified on direct examination that there are no indications of injury in this picture. You said, I believe, that soft tissue injury may exist even though it doesn't show in the x-ray."

"That's right."

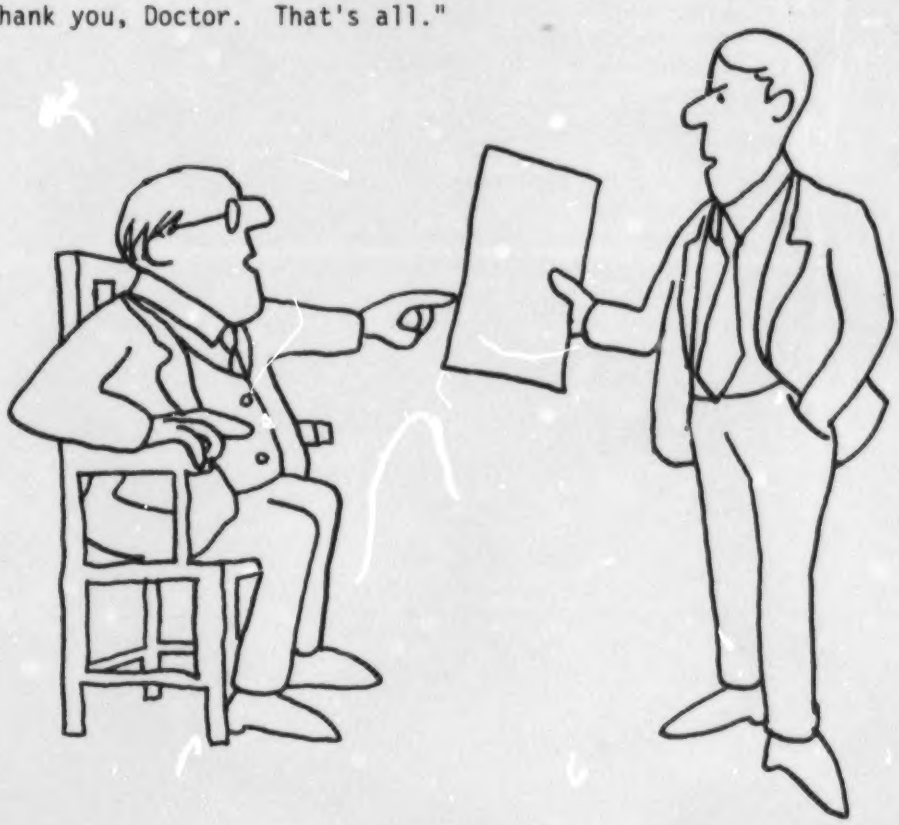
"Then, Doctor, if you merely looked at this x-ray--without knowing anything else--you couldn't tell whether the neck shown in it had actually suffered a whiplash or not?"

"That's true. Yes."

"Even though the patient claimed at the time the x-ray was taken, that he was suffering great pain and discomfort?"

"That is also true."

"Thank you, Doctor. That's all."



Bill Testifies

FINALLY BILL'S MOMENT ARRIVED. KARABEE'S CASE WAS finished; now it was the defense's turn. Bill was the first witness to be sworn. He answered Waterman's questions, going over the familiar story once more.

Mr. Waterman said, "Bill, you testified that Mr. Karabee's car was proceeding as though the driver intended to cross the intersection and continue along Main Street. You followed, you said, about a car length behind--going maybe 20 miles an hour. Now what happened at that point?"

"I thought the car would continue on. Instead it slowed down suddenly. Maybe it almost stopped--I can't remember. Anyway by the time I saw the car and hit my brake, I'd run into him."

"Did you see any signal from the car ahead?"

"I saw the brake lights flash on."

"Did you see any right or left blinker signal?"

"No, sir."

Waterman leaned back. "Your witness, Mr. Perry."

Al Perry began his cross-examination. "Mr. Parr, about how many feet is a car length?"

Bill answered, "About 20 feet, I guess."

"Then you were 20 feet behind the Karabee car, going 20 miles an hour--is that right?"

"Yes, sir."

"All right. You said you thought the car would continue on through the intersection. Under those circumstances you wouldn't *expect* to see a signal, would you?"

"No, I wouldn't."

"So isn't it possible that in the excitement of the moment, there might have been a signal you didn't see because you weren't looking for it?"

"I guess it's possible."

Abruptly, Al Perry said, 'That's all of this witness."

Defense Witnesses

THERE WERE OTHER WITNESSES: A WOMAN WHO WITNESSED THE accident, a doctor who had examined the plaintiff at the request of Bill's insurance company, and a police officer who investigated the collision. Then Mr. Waterman said, "We call as our next witness, Joseph David." Mr. David, it turned out, owned the laundry where Walter Karabee always took his clothes.

"Mr. David," Jim Waterman said, "on the day of the accident--May 19--did you have in your shop any laundry ready for Mr. Karabee to pick up?"

"OBJECTION!" Al Perry was on his feet. "Your honor, the condition of Mr. Karabee's laundry clearly has nothing to do with the issues here."

The judge frowned. "Mr. Waterman?"

"Your honor, we think it is pertinent. If there was no laundry ready on that date, there was no reason for Mr. Karabee to go to the cleaner's, as he testified."

The judge nodded. "Objection overruled. You may answer the question, Mr. David."

"The answer is, on May 19, there was no laundry in my shop ready for Mr. Karabee to pick up."

"Thank you, Mr. David. Your witness, Mr. Perry."

"No questions," Mr. Perry grunted.

"Very well, then, as our last witness," Jim Waterman said, "we call Mr. Barry McCabe." A man who'd been sitting quietly in the back row in the courtroom came forward.

Mr. Waterman questioned McCabe, who said he was a bartender at the cocktail lounge across the street from Walter Karabee's office. "Mr. McCabe, was Mr. Karabee a regular customer of yours around the time of this accident?"

"Your honor!" Al Perry jumped to his feet again. "We object most strenuously to this question. It should be obvious that--"

"Just a moment," the judge interrupted. "If counsel are both ready to argue this point at some length, we should excuse the jury."

The bailiff led the jury out of the courtroom. Then Al Perry told why it was improper to bring out facts--if there were any--about Walter Karabee's drinking habits. Perry said a man could drink regularly but never become intoxicated. "In fact," he said, "that's the situation here. But the jurors may be prejudiced by the very fact that Mr. Karabee drinks occasionally. Besides, there's absolutely no proof that Mr. Karabee was even slightly under the influence of alcohol on the day of the accident."

The judge nodded. "Mr. Waterman?"

Bill's attorney said, "Your honor, Mr. Karabee's drinking habits are relevant to this case. You'll understand better when Mr. McCabe tells us about what happened on the day of the accident."

Judge Enright said, "I will allow the questioning to continue, Mr. Waterman. However, any improper testimony will be struck from the record."

In a few minutes the jury came back. Waterman continued his questioning. "Mr. McCabe, was Mr. Karabee a regular customer of yours around the time of the accident?"

"Yes. He'd come in regularly. Around 4:30, 5 o'clock, maybe three times a week. Sometimes more, sometimes less."

"Did Mr. Karabee visit your establishment on the day of the accident?"

"Yes. He did."

"Now, did you note anything unusual about Mr. Karabee's visit on the day in question?"

"Yes, sir. Mr. Karabee came in at 3 o'clock that day. He never came in that early before, that I can remember."

"Did you have a conversation with him at that time?"

"Yes."

"What was the conversation about, as nearly as you can remember?"

"Well, mainly it was about a meeting he'd just had with the big brass in the company he worked for. He said they were demoting him. He kind of rambled around some, but it seemed they were taking away his vice-presidency and making him a special consultant to the company."

"Did Mr. Karabee do or say anything, or act in any way that showed how he felt?"

"Yes. He was real upset and sometimes he pounded the bar with his hand or his fist. I tried to calm him down."

"What time did he leave, Mr. McCabe?"

"Around 5 o'clock, just about the time the place starts to fill up."

"And during the two hours he was in your lounge, how much alcohol did he consume?"

"Well, he had about five or six drinks."

"Did you observe anything unusual about Mr. Karabee at the time he left you, Mr. McCabe?"

"No, I didn't. I'd say he'd calmed down some, Mr. Waterman. He didn't show any effect from those drinks. Not that I could see."

"Your honor," Mr. Waterman said, "no further questions."

Cross-Examination

MR. KARABEE'S ATTORNEY ROSE AND WALKED TO MR. McCABE. "I have only a few questions at this time. First, when Mr. Karabee normally came in--which you said was maybe three times a week--how many drinks did he usually have?"

"Well, he always had a scotch and soda. Sometimes only two, sometimes three, once in a while four."

"Did you observe anything different about Mr. Karabee's behavior when he had four drinks as compared to when he had only two?"

"No, sir."

"And five or six drinks appeared to have no more effect on him than the two, or three, or four he had on other occasions?"

"No, sir. Not that I could tell."

"And his being 'real upset' might be due to his work problems, rather than to alcohol? Is that right?"

"Yes, sir. He was more upset when he came in than after he'd sat awhile and had a few drinks."

"That's all, Mr. McCabe. Thank you."

Summing Up

JUDGE ENRIGHT SPOKE. "EACH OF THE ATTORNEYS WILL SUM UP his case now. Then I will instruct the jury. And tomorrow morning, you ladies and gentlemen will begin your deliberations. Mr. Perry?"

Al Perry faced the jury. "Ladies and gentlemen," he began, "what we have here is a simple traffic accident--a rear-ender. Mr. Parr hit Mr. Karabee because he was following too closely and couldn't stop in time. Safety authorities say you should stay back one car length--or 20 feet--for each 10 miles of speed. Mr. Parr admits that just before the collision he was following only one length behind, at 20 miles an hour. That's twice as close as he should have been following.

"Whatever Mr. Waterman may say, please keep in mind the basic, admitted facts of this case. They are, first, that Mr. Parr was following too closely. Second, that as a result he rear-ended Mr. Karabee. Third, that the impact was great enough to mash in the entire end of Mr. Karabee's heavy automobile. Fourth, that this impact threw Mr. Karabee's head back with violent force. Fifth, that this damaged the tissues of his neck and shoulders, as well as his nerves and blood vessels.

"We submit, ladies and gentlemen, that Mr. Karabee's loss of income, pain and suffering, car damage, and medical expenses entitle him to the amount sued

for in our complaint--namely, $100,000. We ask that you return your verdict for that amount."

Judge Enright spoke to the jury. "Mr. Waterman will address you now on behalf of the defendant, Mr. Parr. When he has finished his remarks, Mr. Perry may want to make some additional comments which, under the rules of this court, he is entitled to do."

Bill's attorney said to the jury, "Ladies and gentlemen, I agree with some of the facts Mr. Perry has pointed out. Yes, Mr. Parr ran into the back of Mr. Karabee's car. Yes, Mr. Karabee was injured. Yes, he suffered some pain and loss of employment. But ladies and gentlemen, I would like to make clear that Mr. Karabee himself was partly responsible for the accident. And by doing so is not entitled to receive all the money he's asking for. Let's look at some of the facts we've learned here in the past few days.

"First of all, we have the testimony of Mr. Karabee's own expert, Dr. Banner. Dr. Banner says he couldn't tell, by looking at the x-rays, whether Mr. Karabee was injured or not. The only indication the doctor had was Mr. Karabee's complaint about an injury and the pain he was in."

Mr. Waterman paused, then went on. "Now let's consider Mr. Karabee's demotion. The day of the accident his superiors took him off the work he was doing and made him a consultant. The consultant job paid a great deal less than a vice-presidency.

"So it's easy to understand why Mr. Karabee was very upset on the day of the accident. We learned from Mr. McCabe that he had been drinking steadily for about two hours. Then he got in his car, apparently to drive home. At Main and Third he said he suddenly remembered his laundry. But Mr. David testified there *was no* laundry ready for Mr. Karabee that day. Obviously, he just wasn't thinking straight on the afternoon of the accident.

"Ladies and gentlemen, I submit that because of his demotion earlier that day--plus the amount of alcohol in his bloodstream--Mr. Karabee's physical and emotional condition was such that he didn't know where he was or what he was doing. That's why he slowed when there was no reason for doing so. That's why he was the one really responsible for the accident. And that's why you, the jury, should not award Mr. Karabee all the money he wants.

"On the contrary, you should first decide who was negligent. If you decide that Mr. Karabee was completely responsible for the accident, then you should make your judgment in favor of my client, Mr. Parr. If you find both Mr. Karabee and Mr. Parr were partly to blame for the accident, then you must decide to what extent each man was negligent, and divide the damages accordingly."

REBUTTAL

AS JIM WATERMAN SAT DOWN, AL PERRY ROSE TO GIVE HIS REBUTTAL. "Ladies and gentlemen of the jury," he said, "if Mr. Karabee was demoted by his company, there's still another fact to consider. That is, both the company and Mr. Karabee

knew that he might look for another job. Well, because of all the pain he suffered, he couldn't look for other work.

"Furthermore, I would like to puncture another defense balloon--that Mr. Karabee is a sinister conspirator because he didn't really have shirts at the laundry. Well, haven't all of us had temporary lapses of memory about little errands? You go to the supermarket to buy eggs, forgetting that you bought eggs the day before. Ladies and gentlemen, that's all that's involved here--a sudden lapse of memory.

"Another point. Defendant's counsel has made a big thing out of Mr. Karabee's supposed drinking. All we know is that a bartender remembers serving this gentleman five or six drinks two years ago. Remember what Mr. McCabe himself said--that after a couple of hours in the quiet bar, Mr. Karabee calmed down. The bartender saw no effect of his drinking at all. Nor did the police officer investigating the accident. So regardless of the drinks, Mr. Karabee conducted himself with restraint and good judgment. Therefore, you should bring in your verdict in his favor for the full amount asked for in our complaint. Thank you."

Jury Instructions

AFTER TALKING BRIEFLY WITH THE TWO LAWYERS IN HER CHAMBERS, the judge read the instructions to the jury. "You are instructed," she said, "that if you find in favor of the plaintiff--Walter Karabee--on the issue of liability, you must make an award in his favor for the actual damage to his car, as well as the loss of its use while being repaired. You must also compensate him for the physical injuries he received as a result of the collision."

Judge Enright paused, looked at the jury, and continued. "You are further instructed that contributory negligence is the lack of reasonable care on the part of the plaintiff which--combining with negligence on the part of the defendant--contributes as a proximate cause in bringing about the injury. Contributory negligence, if any, on the part of the plaintiff does not bar a recovery by the plaintiff against the defendant. But the total amount of damages to which the plaintiff would otherwise be entitled shall be reduced in proportion to the amount of negligence attributable to the plaintiff."

Again, the judge paused, cleared her throat, and said, "If you find that the plaintiff's injury was caused by a combination of the defendant--Mr. Parr's--negligence and the contributory negligence of the plaintiff, you will determine the amount of damages to be awarded by you, as follows:

"First: You will determine the total amount of damages to which the plaintiff would be entitled under the court's instructions if the plaintiff had not been contributorily negligent.

"Second: You will determine what proportion or percentage is attributable to the plaintiff of the total combined negligence of the plaintiff and of the defendant.

"Third: You will then reduce the total amount of the plaintiff's damages by the proportion or percentage of negligence attributable to the plaintiff."

Finally, the judge said, "That concludes my instructions to you, ladies and gentlemen of the jury. We will adjourn court now. You will return tomorrow morning, promptly at 10 o'clock to begin your deliberations. Meanwhile I caution you not to discuss the case among yourselves, or with anyone you may meet in the corridors or around the courthouse, or with either of the lawyers involved."

THE VERDICT

IT WAS 3 O'CLOCK THE NEXT AFTERnoon when the bailiff walked into the judge's chambers. A moment later he came out and said, "The jury has reached a verdict. As soon as the clerk can reach the attorneys, we will announce it."

Twenty minutes later the lawyers, judge, and jury assembled again. The foreperson of the jury rose and said, "We, the jury, find that Walter Karabee was damaged to the extent of $780 for medical expenses, $105 for laboratory and x-ray expenses, $322 for repairs to his car, $4,000 for loss of employment and $2,500 for pain and suffering. We further find that the accident was caused by negligence of both parties. Therefore, the damages should be apportioned, with the plaintiff's damages being reduced by 50 percent, and the defendant to pay the remaining 50 percent."

Later in the corridor, Jim Waterman said to Bill, "We've won a major victory, but we don't know yet if we've won the war. Karabee may want to go on fighting--ask for a new trial, or take an appeal to a higher court--or both."

"You don't think he'll be satisfied with half of $7,700?"

"Maybe. Maybe not. Remember that he asked for $100,000, and held out about settling for $25,000. We'll just have to wait now and see what he does. But I can tell you this, Bill--the odds are strongly in our favor."

A few weeks later Waterman phoned him. "Perry made a motion for a new trial," he said. "But the judge denied it. So now Karabee has decided to take the money rather than gamble on an appeal, and probably lose it. The insurance company will pay him the $3,800, and get his signed release--and your're home free."

SAMPLE LESSON

NOTES TO TEACHER

Role-playing a court trial can be an especially effective means of giving your students direct experience with some of the ways in which our legal system functions. Student participation in a mock trial is an enjoyable way to learn about our courts, and it can make future classroom discussions about our legal system or a visit to your local court in session a more meaningful experience for your students.

Fact situations used in a mock trial may be based on an actual court decision or on a set of hypothetical circumstances dealing with either a civil or criminal matter. This hypothetical civil case, *Coleman v. Morris*, was developed by the Sacramento Barristers Club and Law in a Free Society of the San Juan Unified School District. It deals with an "unlawful detainer" action. That is, an attempt by apartment owner Coleman to have one of his tenants, Morris, evicted.

This packet of materials should provide you as the teacher with all of the information you and your students will need to conduct the trial in your own classroom. In addition to the "Notes to Teacher" section, these materials include:

1. *"Case Fact Sheet"--explanation of facts and circumstances leading up to the case, Coleman v. Morris.*

2. *"Role Sheets"--explanation to each student player of what his role in the proceedings will be and of what he should testify to if he is a witness.*

3. *"Case Procedures Sheet"--explanation of procedures to be used in conducting the trial.*

4. *"Jury Instruction Sheet"--explanation to the jurors of how to consider the evidence presented during the trial.*

If you decide to put on this mock trial in your classroom, here is how to go about it:

1. Teacher should: (1) read the entire kit; (2) discuss background material and the fact situation of *Coleman v. Morris* with entire class; (3) assign roles to students and answer students' questions about their roles, being certain to talk individually with the students who will play the roles of the judge and the attorneys; and (4) during the actual proceedings act as a supervisor, intervening only as necessary to give information or answer questions.

2. Background to be gone over in class before discussion of this case would include the factual material in "Civil Courts," especially the section dealing with trials, beginning on page 12, and the example case, beginning on page 14.

3. Time required is four class periods. You will need one period to discuss background material and the case fact situation, which should be duplicated so that each student may have his own copy. You will also need time to answer individual questions. You will need two class periods for the trial. And you may well want to spend a fourth day discussing the questions that are bound to arise during the proceedings.

4. Roles to be assigned include the Judge, Bailiff, Court Clerk, Court Reporter, 2 Attorneys, Defendant, 5 Witnesses and 14 Jurors. This will involve 26 students in the trial. If you have a smaller class, you may omit the roles of the court reporter and the jurors to be excused.

   Give each student a copy of the "Role Sheet" for his part.

   Give the judge a copy of each "Role Sheet," the "Case Procedures Sheet," the "Case Fact Sheet," and the "Jury Instruction Sheet."

   Give each attorney a copy of the "Role Sheets" for all of the witnesses both for and against his client. Also, give the attorneys a copy of the "Case Fact Sheet," "Case Procedures Sheet," and "Jury Instruction Sheet."

   Caution all of the students not to discuss their roles with anyone, unless you specifically tell them to do so. It will be necessary for the attorneys to discuss the testimony to be given during the proceedings with their clients and witnesses. It will also be necessary for each attorney to draw up a list of questions he will ask each of his witnesses and the witnesses against his client. You should check over the lists with the student to make sure he hasn't omitted any essential questions.

5. Jurors should also review their roles with you. Their "Role Sheets" will tell them how to consider the evidence presented during the case, but it would be a good idea to review this material with them before the proceedings start. When it is time for the jurors to deliberate, you may: (1) have them leave the classroom and reach a decision while the other students are silently writing down their own decisions and the reasons why they decided as they did; or (2) ask the jury to deliberate aloud in the classroom while the other students listen to their discussion but refrain from making any comment.

6. Scenario for the mock trial should include arranging your classroom to look as much like a courtroom as possible, using the lectern for the judge's bench; the teacher's desk (placed to the right of the lectern) for the court clerk and court reporter; a chair for the witness stand placed to the left of the lectern; the jury off to the side; the attorneys at desks facing the lectern, with their clients at their sides; the bailiff at the door to the classroom. The judge may wear a choir robe if he wishes and witnesses may even dress for their parts.

This trial is being conducted in municipal court because it is an unlawful detainer action involving less than $600 a month rent and less than $5,000 total damages.

CASE FACT SHEET

Coleman v. Morris

Mr. Howard Knox is the resident manager of the Royal Palms Apartments in Middletown. Acting on behalf of the owner, Mr. George Coleman, he has full authority to lease apartments, collect rent, and order repairs necessary to the upkeep of the building.

At the time the defendant, Mr. Oliver Morris, first asked for a one-year lease on apartment 40, he knew that another tenant in the building, Mrs. Pauline Nabors, owned and kept in her apartment a mild-mannered Pekingese dog named "Teensy." Mr. Morris was certain that Mr. Knox knew all about "Teensy." After all he had seen Mr. Knox and Mrs. Nabors, a retired school teacher, talking together in front of her apartment with "Teensy" present several times before he leased the apartment and many times since. Mrs. Nabors has been a Royal Palms Apartment dweller for many years.

Mr. Morris owns a Labrador retriever, "Pal," which he keeps for companionship and as a watch dog. Oliver knew when he signed the lease that a set of apartment house "Rules and Regulations" was attached and made a part of it. One of the 27 rules listed was that "No pets are allowed on the premises." Oliver signed the lease and moved in with "Pal," but did not discuss his dog with Mr. Knox at that time.

Several tenants have complained to Mr. Knox about "Pal," specifically about his barking and the presence of the dog's fecal matter on the lawn near the swimming pool. Other neighbors have complained that their newspapers were chewed up on their doorsteps. On most of these occasions, Mr. Knox has mentioned the complaints to Mr. Morris.

On the other hand, no tenant has ever complained to Mr. Knox about Mrs. Nabor's "Teensy."

Finally, Mr. Knox gave Oliver a notice telling him to get rid of "Pal" or move out of his apartment within three days. Those three days passed, and Oliver and "Pal" both continued to live in apartment 40.

At that point Mr. Knox filed suit to force Oliver to move out of the apartment. After the complaint was filed, it was served, then answered, and now the case is ready for trial. The plaintiff--Mr. Coleman--claims the defendant--Mr. Morris--is "in unlawful detainer for a material breach of his lease." That is, Mr. Coleman claims that Oliver has no right to continue to live in apartment 40 because he has violated certain conditions of his lease by keeping a dog and thereby creating a nuisance. There are six months left on the one-year lease.

Oliver believes that Mr. Knox wants to get rid of him solely because he has repeatedly complained about defects in his apartment and the general upkeep of

the apartment complex. Among his frequent complaints are the following:

1. *Peeling paint in the kitchen; still not fixed.*
2. *Leak in the roof which it took six weeks for the landlord to have fixed.*
3. *Unsanitary condition of the garbage area.*
4. *Poor maintenance of the garden areas.*
5. *Excess noise around the pool, particularly in the late evening.*
6. *Poor pool maintenance.*
7. *Others using his assigned parking space.*

Oliver has always paid his rent on time.

ROLE SHEETS

JUDGE

You are a judge of the Middletown Municipal Court. At age 50, you have been a judge for nine years. You are the "trier of fact" in the case *Coleman v. Morris*. You are responsible for everything that happens in your courtroom and you must maintain an orderly, dignified atmosphere at all times.

You will conduct the trial, including questioning of the prospective jurors; telling the attorneys when to begin with their opening statements; calling for the examination and cross-examination of each witness; considering and ruling on objections made by the attorneys to statements made by witnesses during the trial, i.e., deciding whether or not a certain question is proper; calling for summation by the attorneys at the end of the trial; reading the instructions to the jury; receiving the jury's verdict and formally pronouncing it to the court.

You will receive copies of the "Case Fact Sheet," all of the "Role Sheets," the "Case Procedures Sheet," and the "Jury Instructions Sheet." Read them over carefully and discuss them with your teacher before the trial starts.

BAILIFF

You are the bailiff and you will call the court to order before each stage of the proceedings. Your part reads: "Please stand. Hear ye, hear ye, the court is now open and in session. The Honorable Judge J. A. Stanley, presiding. All persons having business before the court come to order." It is also your duty to maintain order in the courtroom at all times.

PLAINTIFF'S ATTORNEY

You are the attorney who will represent George Coleman, owner of the Royal Palms Apartments, and his resident manager, Howard Knox, in their attempt to have defendant Oliver Morris and his dog "Pal" evicted from apartment 40. You represent Mr. Coleman in all of his legal affairs. You are an advocate and it is your job to convince the court of your client's case. You will try to prove your case by the presentation of certain evidence. At the trial you will challenge one juror peremptorily; you just don't like the looks of him. You will make an opening statement, telling the court what you intend to prove as you make your case. You will examine your witnesses, who will include Howard Knox, Gerald Toll and June Starr. You will cross-examine the witnesses for the defense after they are questioned by the defendant's attorney. You will make a closing statement to the jury to summarize your case and to attempt to convince the jurors to make a decision on behalf of your client.

You will receive copies of the "Case Fact Sheet," "Role Sheets," "Case Procedures Sheet," and "Jury Instruction Sheet." Read them over carefully and discuss them with your teacher before the trial starts.

Defendant's Attorney

You are the attorney who will represent defendant Oliver Morris in his attempt to stay in apartment 40 at the Royal Palms. You are 47 years old and a business friend of Oliver's father; you've had extensive practice in civil court. You are an advocate and it is your job to convince the court of your client's case. You will try to prove your case by the presentation of certain evidence. At the trial you will challenge one juror for cause--she has known witness June Starr for many years. You will make an opening statement, telling the court what you intend to prove as you build your case. You will examine your witnesses, who include Oliver Morris, Kim Dudley and Pauline Nabors. You will cross-examine the witnesses for the plaintiff after they are questioned by the plaintiff's attorney. You will make a closing statement to the jury to summarize your case and to attempt to convince the jurors to make a decision on behalf of your client.

You will receive copies of the "Case Fact Sheet," "Role Sheets," "Case Procedures Sheet," and "Jury Instruction Sheet." Read them over carefully and discuss them with your teacher before the trial starts.

Court Clerk

You are the court clerk and you will call the case for trial: "The case of *Coleman v. Morris*. Are all persons connected with this case present and prepared? Are your witnesses present? Let the record show that all the parties in the case *Coleman v. Morris* are present and prepared." You will administer the oath to prospective jurors before the voir dire examination, swearing them to tell the truth. After 12 jurors are selected, you will administer the oath of office. You will also administer the oath each time a witness is called to testify. Before the witness is seated on the stand, have him raise his right hand and ask: "Do you swear that the statements you are about to make are the truth, the whole truth, and nothing but the truth, so help you God?" You will also keep track of any exhibits that are accepted as evidence during the trial.

Court Reporter

You are the court reporter and it is your job to take down every word that is said during the course of these proceedings. You may use a tape recorder to take down what is said, so that you will be able to replay part of the testimony, should you be requested to do so by the judge or one of the attorneys.

PLAINTIFF'S REPRESENTATIVE HOWARD KNOX

You are Howard Knox, a retired fireman and the resident manager of the Royal Palms Apartments. You are representing the plaintiff George Coleman, owner of the apartment complex, at the trial.

On direct examination:

1. You leased apartment 40 to Oliver Morris six months ago for a term of one year.

2. You pointed out that "Rules and Regulations" were attached to the lease, but you did not read them to Oliver nor did you require him to read them at that time.

3. You have received at least 14 separate complaints from neighbors on both sides of apartment 40 concerning "Pal's" barking.

4. You have also had several complaints about the presence of the dog's fecal matter on the lawn in the enclosed quadrangle of the apartments near the pool.

5. You are aware of Mrs. Nabors' "Teensy" and indicate that you knowingly waived the rule against pets in her case, but you have not made any other waivers of the rule.

6. Mr. Morris has never expressly asked you to waive the rule concerning pets on "Pal's" behalf.

7. On each occasion when you told Mr. Morris that other tenants had complained about "Pal," he answered, "I'll take care of it."

8. Three weeks ago you personally served Mr. Morris with a "Three Day Notice to Quit," which demanded that he get rid of the dog or leave the premises.

On cross-examination:

1. You insist that "Teensy" is a very quiet dog. You say you have never had any complaints from other tenants concerning "Teensy."

2. You will admit that you have had frequent complaints from Mr. Morris about his apartment and the upkeep of the grounds. You will claim that in each case you made a suitable reply. If pressed, you will indicate "subtly" that you are somewhat annoyed by Mr. Morris' continual complaints.

3. You will admit that you were reprimanded by Mr. Coleman, the owner, for failing to keep Mr. Morris off Coleman's back with complaints that Morris argued weren't satisfactorily resolved by manager Knox.

DEFENDANT OLIVER MORRIS

You are Oliver Morris, a 27-year-old graduate student working on your Ph.D. in environmental science. You live in number 40 at the Royal Palms Apartments, and you are the defendant in *Coleman v. Morris*.

On direct examination:

1. You knew the rules prohibited pets at the time you signed the lease.

2. You knew Mrs. Nabors had a pet that everyone pretty well accepted and therefore you figured that the rule had been waived generally. You comment, if you can work it in naturally, that "rules are made to be broken."

3. You acknowledge that you have received a few complaints about the dog barking and the newspapers being chewed up, but testify that they have been taken care of.

4. You testify to your long list of complaints that appear in the "Fact Situation." You say that you called the building owner, Mr. Coleman, only after you received no satisfactory or prompt resolution of your complaints by Mr. Knox. You say that Mr. Knox expressed his anger that you went over his head to talk to the property owner.

On cross-examination:

1. You admit having received more complaints about the dog than you indicated on direct examination.

2. You compromise your testimony about the amount of barking the dog does.

3. You express your personal opinion that Mr. Knox is an up-tight fuss-budget.

4. You permit your believability to be impeached to the extent necessary to create a difficult question for the jury.

WITNESS GERALD TOLL

You are Gerald Toll, a retired state employee. You and your wife, Nadine, live in Royal Plams Apartments, number 39, next door to defendant Oliver Morris and his dog "Pal." You travel a lot since you retired, visiting your children and grandchildren.

Before you signed the lease on your apartment, you read the rules attached to it and saw that pets were not allowed. So when you son Carl asked you to take care of "Pixie," his house-broken St. Bernard, while he was on an extended business trip, you told him you wouldn't be able to let "Pixie" stay in your apartment.

You will testify that--on those occasions when you and your wife are at home--the barking right next door in apartment 40 annoys you a great deal. You will say that you have complained to Mr. Knox about Pal's barking several times.

You had seen dog fecal matter on the lawn, but it has never bothered you and you have never complained about it.

You and your wife know Mr. and Mrs. Knox very well and play canasta with them about once a month. You do not know Mr. Morris personally. In fact, you've never spoken to him except on those occasions when you complained to him about "Pal's" barking late at night.

Witness June Starr

You are June Starr, a nurse at the Middletown Hospital. You are 22 years old, single and you live in apartment 41 at the Royal Palms. You work the 4 p.m. to midnight shift at the hospital and consequently spend a fair amount of time sunbathing around the pool in the late mornings and early afternoons.

In the last six to eight months you have frequently been aware of dog droppings around the pool area and have complained to Mr. Knox about the unpleasant sight and smell. On one occasion you weren't watching where you were walking and accidently stepped directly into some of the dog droppings. You are certain that the size and quantity of said droppings clearly preclude the possibility that they were a product of a visit by "Teensy."

You have also complained to Mr. Knox about the dog's barking. But you have never confronted Mr. Morris directly about it because you do not like him. There is no question in your mind that the barking dog is "Pal" and not "Teensy."

You have also complained about a chewed-up newspaper and you believe the culprit to be "Pal," but you have never caught the dog "red-pawed."

Witness Pauline Nabors

You are Pauline Nabors, a retired school teacher. You have lived at the Royal Palms Apartments for ten years. And you've had a small Pekingese dog, "Teensy," as a companion ever since you moved in. "Teensy" was a retirement gift from your fellow faculty members when you left the school district.

You will testify that Mr. Knox is definitely aware that "Teensy" lives with you. You will say that he specifically told you it was all right to keep the dog in your apartment. You might remark that Mr. Knox even brings "Teensy" an occasional bone when he and Mrs. Knox have dinner at a local steakery.

You also know "Pal" and you testify that you really can't remember ever hearing him bark. You have noticed dog droppings on the lawn, and while you know they're not "Teensy's," you're not certain they're "Pal's" either. In fact, you have noticed a lot of stray dogs in the neighborhood lately.

WITNESS KIM DUDLEY

You are Kim Dudley and you live four doors down the hall from Oliver Morris at the Royal Palms. You're 24 years old and you work parttime at a local bank. You attend art school at night and hope to become a well-known sculptress one day. For the past four months you've been dating Oliver and find him to be "one terrific guy."

You know Mrs. Nabors and her pet, "Teensy." You don't know of any problems with "Teensy" as a house pet, and you've never heard her bark.

You testify that "Pal" is also a house dog and no noisier than any other normal dog. You feel Mr. Knox has blown the complaints all out of proportion because he doesn't like the fact that Oliver has demanded that certain necessary repairs be made to his apartment.

You acknowledge that Mr. Knox and your boyfriend do not get along well together at all.

JUROR

Jurors in your municipal court district are selected from the rolls of voters living in Middletown. Your name appears on this year's jury list and you've been summoned as a prospective juror in the case *Coleman v. Morris*.

All prospective jurors in this case will be questioned by the judge. The attorneys for the plaintiff and defendant may challenge any juror they believe is not qualified--either for cause or peremptorily. Any number of jurors may be excused for cause. In addition, each attorney is entitled to six peremptory challenges.

A juror is a judge in a very important respect. Each juror must judge what the truth is--which witnesses are to be believed and what written or other material evidence is true and tends to support the case of either the plaintiff or the defendant. In a civil case the jury's decision does not have to be unanimous; a three-fourths majority may arrive at a verdict.

Jurors are forbidden to talk about the case they are deciding. Nor must they allow anyone outside the court to talk to them about the case until after the verdict is announced in court. Jurors cannot even talk among themselves about the case until they go to the jury room to deliberate.

After the closing statements by the attorneys, the judge will instruct the jury about the law that applies to the case. The jurors must follow his instructions in making their decision.

To arrive at a verdict, the jury deliberates in a jury room--that is, the jurors review, talk about and weigh the evidence. They collectively come to a decision as to what facts have been proven true. They then decide the case either in favor of the plaintiff or the defendant.

The foreperson of the jury, elected by the jurors when they begin their actual deliberations, will start the discussion of the case for which the jury must reach a verdict; will poll the jurors on a secret ballot until a three-fourths majority is reached; and will report the verdict to the court.

Juror to be Excused for Cause

You are a prospective juror who is a friend of witness June Starr's mother. You answer in the questioning that you've known June since she was a little girl.

Juror to be Excused Peremptorily

You are a juror who is to be excused by the plaintiff's attorney for no stated reason. You are a graduate student and a very "casual" person.

CASE PROCEDURES SHEET

1. Bailiff calls the court to order.

2. Court clerk calls the case.

3. Judge selects the jury.

   A. 12 prospective jurors are seated in the jury box.

   B. Clerk swears in prospective jurors.

   C. Judge tells them this is a civil case and tells them a little about the suit.

   D. Judge questions the prospective jurors--called a voir dire examination. The judge attempts to determine if there is a need to excuse any of the jurors because of preconceived notions of the facts or parties. The questions should be restricted to four or five each: name, occupation, ability to be fair to defendant in this type of case, personal knowledge of any participant in trial. As a result of this questioning, one juror is excused for "cause," personal knowledge of one of the parties involved, and another is excused after a "peremptory" challenge by the plaintiff's attorney.

   E. Two new jurors are sworn and questioned, bringing the total to 12 qualified jurors.

   F. Court clerk administers oath to the jury.

4. Judge gives opening instructions telling jury how to consider the evidence they will hear. Material is included on "Jury Role Sheet."

5. Attorneys for both plaintiff and defendant make short opening statements on what they expect to prove. They cannot argue the case or offer evidence at this time. The plaintiff's attorney goes first.

6. The witnesses are called: first Howard Knox, June Starr and Gerald Toll for the plaintiff, then Mrs. Pauline Nabors, Kim Dudley and Oliver Morris for the defense. The court clerk administers the oath as each witness is called. Direct examination is conducted by the attorney who calls the witness. Then the opposing counsel conducts a cross-examination of the witness, limiting his questions to subjects brought up in direct examination. During the testimony, the opposing attorney may object to certain statements and ask the judge not to allow them. This might happen if a witness gives his opinion as to what happened, rather than sticking to the facts. For example, Gerald Toll might testify, "My morning newspaper was shredded to bits, and I'm sure that big, loud dog next door did it." Mr. Toll couldn't know this for certain unless he had actually seen Pal chew up the paper.

7. Finally, the plaintiff's attorney then the defense make their closing arguments, summarizing their case and attempting to convince the jury to make a decision on behalf of their clients.

8. Judge reads the "Jury Instructions Sheet" to the jury and directs them to retire and decide upon a verdict.

9. The judge receives the verdict from the jury and announces it. He thanks the jury for their service and dismisses them.

JURY INSTRUCTION SHEET

Ladies and Gentlemen of the Jury:

I

It is my duty to instruct you in the law that applies to this case, and you must follow the law as I state it to you.

As jurors it is up to you to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

II

If in these instructions any rule, direction or idea is repeated, no emphasis on it is intended by me and none must be inferred by you. For that reason you are not to single out any certain sentence or any individual point or instruction and ignore the others. You are to consider all the instructions as a whole and are to regard each in the light of all the others.

III

The order in which the instructions are given has no significance as to their relative importance.

IV

You are not bound to decide the case based on the testimony of a number of witnesses, which does not produce conviction in your mind, as against the testimony of a lesser number or other evidence, which appeals to your mind with more convincing force. The testimony of one witness worthy of belief is sufficient for the proof of any fact. This does not mean that you are at liberty to disregard the testimony of the greater number of witnesses from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

V

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in court.

VI

You are the sole and exclusive judges of the credibility of the witnesses who have testified in this case.

In determining the believability of a witness you may consider any matter that has a reasonable tendency to prove or disprove the truthfulness of his

testimony, including but not limited to the following:

His demeanor while testifying and the manner in which he testifies;

The extent of his capacity to see or hear, to remember or to communicate any matter about which he testifies;

His character for honesty or truthfulness or their opposites;

The existence or nonexistence of a bias, interest, or other motive;

A statement previously made by him that is consistent with his testimony;

A statement made by him that is inconsistent with any part of his testimony;

The existence or nonexistence of any fact testified to by him;

His attitude toward the action in which he testifies or toward the giving of testimony;

His admission of untruthfulness.

VII

Discrepancies in a witness's testimony or between his testimony and that of others--if there were any--do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or a transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to an unimportant detail should be considered in weighing its significance.

VIII

In his action to regain the premises, the plaintiff has the burden of establishing by a preponderance of the evidence all the facts necessary to prove all of the following issues:

1. That plaintiff leased the premises known as Royal Palms Apartments, #40, to defendant by a written one-year lease.

2. That under that agreement, defendant was subject to certain rules and regulations which prohibited, among other things, defendant from keeping a pet.

3. That, by virtue of the written lease, defendant took possession of the premises and continues in possession at this time.

4. That defendant has violated the terms of the written lease by keeping a pet on the premises.

5. That more than three days before the date this action was filed, plaintiff properly served on defendant a notice in writing which stated unequivocally

that defendant, must, within three days, comply with the rule regarding pets, or vacate.

6. That within three days after the service of the notice, defendant failed to comply with the rule.

IX

By a preponderance of the evidence it is meant, such evidence as, when weighed against that opposed to it, has more convincing force and the greater probability of truth. In the event that the evidence is evenly balanced so that you are unable to say that evidence on either side of an issue predominates, then your finding upon that issue must be for the defendant.

In determining whether an issue has been proven by a preponderance of the evidence, you should consider all the evidence upon that issue regardless of who produced it.

X

The law forbids a landlord from evicting a tenant if his main reason for so doing is to get back at the tenant because the tenant has repeatedly complained about the condition of the property. If you find that plaintiff's main reason in serving the notice on defendant or in bringing this action was to retaliate for this reason, then you must render judgment for the defendant.

XI

If you find that a condition of the lease was that no pets were allowed on the premises, you must then decide whether this rule has been waived by the plaintiff. If you find that the plaintiff has waived the rule regarding pets, then you must render judgment for the defendant.

XII

When you go to the jury room it is your duty to discuss the case for the purpose of reaching an agreement if you can do so.

Each of you must decide the case for yourself, but should do so only after a consideration of the case with the other jurors.

You should not hesitate to change an opinion if you are convinced it is erroneous. However, you should not be influenced to decide any question in a particular way simply because a majority of the jurors, or any of them, favor such a decision.

The attitude and conduct of jurors at the beginning of their deliberations are matters of considerable importance. It is rarely good for a juror, upon entering the jury room, to make an emphatic expression of his opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be aroused, and he may hesitate to change his announced position if shown that it is wrong. Remember that you are not advocates in this matter, but are judges.

Each of you should deliberate and vote on each issue to be decided.